



The Protection of Children (Scotland) Act 2003

This briefing works in tandem with VAN briefings 82 and 83: Child Protection Parts 1 and 2, a helpful guide to child protection in general. The focus of this briefing is the Protection of Children (Scotland) Act 2003, which places certain legal requirements on people working with children in Scotland.

Following the tragic events in Dunblane in 1996, Lord Cullen made a number of important recommendations, one of which was the safe recruitment of people working with children and young people. The Protection of Children (Scotland) Act 2003 (or PoCSA for short) is the result of that enquiry. It came into force in January 2005 and enables all employers (of either paid or voluntary staff) to use the process of 'Disclosure' to check potential employees against the Disqualified from Working with Children List (DWCL). This process should now form part of the recruitment process for a 'Child Care' position.

Despite how it sounds, a 'Child Care' position as defined in Schedule 2 of PoCSA is very far reaching. It is not confined to nursery staff or crèche workers as you might expect. Instead, it describes anybody "whose normal duties include caring for, training, supervising or being in sole charge of children under the age of 18." This could mean the conductor of a youth choir, the leader of a children's craft workshop, a piano teacher – the list is quite extensive. A full definition of a 'Child Care' position is detailed in Schedule 2 of PoCSA, and can be found in the Scottish Executive booklet *'Protection of Children (Scotland) Act: Guidance for organisations'*.

To decide whether or not an individual needs to be Disclosure checked (and at what level) you

must first establish whether they are in a 'Child Care' position. If so, they need to be checked against the DWCL.

The Disqualified from Working with Children List (DWCL)

This is a list of individuals, held by Scottish Ministers, who are deemed unsuitable to work with children under the age of 18. PoCSA specifically states that it is an offence for anybody named on the List to work with children, or for an organisation to employ anybody (paid or voluntary) who is on the List. In order to find out if an individual is on the List, they need to be Disclosure checked at either Standard or Enhanced level. Therefore, in order to comply with this new legislation, organisations must have all new employees in a 'Child Care' position Disclosure checked.

Disclosure Checks

A Disclosure Certificate is an official document containing information on individuals held by the police and other government agencies. Disclosure Scotland is the organisation which ultimately processes all Disclosure checks through the Scottish Criminal Records Office (SCRO). Voluntary organisations can access free Disclosure checks via the Central Registered Body in Scotland (details of which can be found over the page). There are three types of check: Basic, Standard and Enhanced.

- **Basic Disclosure** – this provides details of current (unspent) convictions. However, it will not tell you if somebody is on the DWCL.
- **Standard Disclosure** – this provides information on both old (spent) and current (unspent) convictions. It can also state if the individual is on the DWCL and therefore disqualified from working with children.



- **Enhanced Disclosure** – this provides the same information as a Standard Disclosure plus any additional ‘soft intelligence’ from local police records which the Chief Constable feels is relevant to the position.

Spent/Unspent Convictions

A custodial sentence of over 2½ years will remain on an individual’s criminal record permanently, and is known as ‘unspent’. Convictions of 2½ years or under, and fines, will be removed from a criminal record (and become ‘spent’) between 6 months and ten years afterwards, depending on the offence. Standard and Enhanced Disclosures show both ‘spent’ and ‘unspent’ convictions.

Who needs to be Disclosure checked?

- It is essential to obtain Standard or Enhanced Disclosure (the level is dependent on the regularity and proximity of contact) for anybody working in a ‘Child Care’ position. To give this some context, if Shona teaches art at her local youth club every Friday, she needs **Enhanced** Disclosure. If Cameron comes along to help her on an ad hoc basis, **Standard** Disclosure would be sufficient. If Annie, a child’s mother, helps out with an art gallery trip on a one-off basis, she would **not** need to be Disclosure checked but the club’s internal policy should say that she remains supervised at all times (i.e. not left alone with a child).
- It is important to ensure that individuals being Standard or Enhanced checked actually work in a ‘Child Care’ position. Writing a detailed job description can help with this. If you apply for a Standard or Enhanced Disclosure check for somebody who is part of an organisation that works with children, but who personally does not meet the definition of a ‘Child Care’ position, you may breach Data Protection and commit an offence under ‘The Rehabilitation of Offenders Act 1974 (Exclusions & Exceptions Scotland Order 2003)’.
- If someone already holds a Disclosure Certificate, obtained through another organisation, they must still be Disclosure checked for the work they will do for your organisation. This is because a Disclosure Certificate is job specific – it is also only valid on the day it is produced. Provided an individual retains the same role within the same organisation, they are not currently required to be Disclosure checked more than once. If, however, an individual changes role (even within the same organisation) and is recruited in a ‘Child Care’ position, they will need to be Disclosure checked again in order to comply with the legislation.
- At present, only new employees have to be Disclosure checked, as Section 11 (3) (b) of PoCSA has yet to be enacted. When it is, it will require all persons (including existing staff, paid or unpaid) working in a ‘Child Care’ position to be Disclosure checked. Organisations are advised to put procedures in place to adequately handle this when the time comes.
- Once you have established the individual is working in a ‘Child Care’ position as defined by PoCSA, it is essential to write the words ‘Child Care’ as a prefix to the job title on the Disclosure form, in order for the person to be checked against the Disqualified from Working with Children List.
- Managers and charity trustees who are in direct charge of an individual in a ‘Child Care’ position may need Enhanced Disclosure, even if they do not hold ‘Child Care’ positions themselves. Organisations should check Schedule 2 of PoCSA to see if this is applicable to them. This can be found in the ‘*Protection of Children (Scotland) Act: Guidance for organisations*’.
- A copy of the Disclosure Certificate is sent to both the individual and to the organisation who requested it. When you request a Disclosure check through an umbrella body, the umbrella body must decide how to disseminate the information to the organisation. If the certificate is passed on to the organisation, the umbrella body has no need for a copy and one should not be made.
- Under 18s working in ‘Child Care’ positions, paid or unpaid, also need to be checked.
- **Disposal** – Disclosure Scotland stipulates that Disclosure Certificates must be kept in a secure, non portable location. They may be kept for a maximum of six months, after which



time they must be destroyed (shredded, pulped or burnt). The CRBS can offer both advice and assistance on the storage and disposal of Disclosure Certificates. In order for an individual to prove they have been Disclosure checked (after disposal) they should keep a note of the issue date, level of Disclosure, position applied for and the unique number issued by Disclosure Scotland.

The Central Registered Body in Scotland (CRBS)

The Central Registered Body in Scotland was established by the Scottish Executive to provide free Disclosure checks for volunteers working in the voluntary/not for profit sector. You can register with the CRBS free (normally £150), and process all Standard and Enhanced Disclosure checks for volunteers working within the voluntary sector free of charge (normally £13.60 each). Paid staff working in the voluntary sector can still be processed through the CRBS but have to pay £13.60 for each Disclosure check. Basic Disclosure checks can only be obtained directly from Disclosure Scotland for the appropriate fee.

At present, both the CRBS and Disclosure Scotland can only process Standard and Enhanced Disclosure Checks for people working in an organisation. Those working alone, either in a self-employed or voluntary capacity, will need to seek Disclosure checks through an alternative channel. Umbrella bodies or local authorities may be able to process Disclosure checks for you, however you may need to adopt certain policies set by the umbrella body or provide your own. The Scottish Disclosure Advisory Service is an umbrella body specifically set up to process applications from individuals for a small fee. They operate in the Central Belt, and a face-to-face visual check is required (see Useful contacts).

Registering with the CRBS

In order to register with the CRBS, each organisation must assign a 'Lead Signatory'. They should be a figure of authority within the organisation and should have some responsibility/involvement in the recruitment process. They will always be the main contact for the CRBS unless the organisation is very large, or has smaller affiliated groups, in which case you may appoint

'Additional Signatories' or a 'Collator'.

You will need a visual I.D. check (which can be carried out at various locations across the country) and the following documentation/information:

- Birth Certificate/Passport
- Leaflets/brochures describing your organisation
- Details on the structure of your organisation
- How your organisation is funded
- Application and self-disclosure forms used by your organisation
- Child Protection Policy
- Recruitment of Ex-Offenders Policy
- Policy for the secure handling, storage and disposal of Disclosure Certificates

The CRBS carries sample policies and documents on its website, which you can adapt accordingly.

As of August 2005, the CRBS was taking approximately 6 weeks to process checks. This will obviously fluctuate along with demand. Ensuring all your documentation is in place, and that your form is correctly filled out, will prevent any unnecessary delays. If you need to employ a volunteer in a 'Child Care' position before his/her Disclosure check has been returned, you should endeavour to have them supervised at all times. It would also be prudent to write a risk assessment, and obtain references and a self-disclosure form from the individual (Voluntary Arts Network briefing No 67 on Risk Assessment can help with this – see www.voluntaryarts.org or contact Voluntary Arts Scotland). The booklet 'Protection of Children (Scotland) Act 2003: Guidance to the voluntary sector' gives further advice on this matter.

Recruitment procedures

Disclosure Scotland, the CRBS and the Scottish Executive recommend that Disclosure checks form only part of your recruitment procedure. Organisations are advised to ask prospective employees/volunteers to fill out both an application and self-disclosure form, and to provide two referees which you then follow up. The employer, in turn, should write a 'task description' for each job – this in itself will help you determine whether a job is a 'child care' position. (Voluntary Arts Network briefings Nos 47 & 63 on Recruitment can help with this – see www.voluntaryarts.org or contact Voluntary Arts Scotland).



Making Referrals to the Disqualified from Working with Children List

Under the Protection of Children (Scotland) Act 2003, organisations have a duty to refer to Scottish Ministers any individual who “harms a child, or puts a child at risk of harm” AND has been removed from their post as a result of their actions. In addition, individuals who have left an organisation through resignation, retirement or expiration of contract, and harmed a child prior to leaving, must also be referred. PoCSA does not give a definitive explanation of the term ‘harm’, only that it is not restricted to physical harm. It is therefore up to individual organisations to determine their definition of harmful behaviour and incorporate this in their Child Protection Policy.

Further information & resources

‘Creating Safety: Child Protection guidelines for the arts’

Published by the Scottish Arts Council and Children in Scotland. Copies can be obtained from the Scottish Arts Council.

T: **0131 226 6051 / 0845 603 6000.**

E-mail: help.desk@scottisharts.org.uk or Children in Scotland T: **0131 228 8484.**

E-mail: info@childreninscotland.org.uk

Also downloadable from www.scottisharts.org.uk and www.childreninscotland.org.uk

‘Protecting Children and Young People: A guide and training pack for the voluntary sector’

Downloadable from www.crbs.org.uk or hard copies available from the CRBS (see Useful contacts) or Children in Scotland (see above).

‘Protection of Children Scotland (Act) 2003: Guidance for organisations’

Downloadable from www.scotland.gov.uk/childprotection or hard copies available from Blackwell’s Bookshop. T: **0131 622 8283.**

‘Protection of Children Scotland (Act) 2003: Guidance to the voluntary sector on who needs to be checked against the Disqualified from Working with Children List’

Downloadable from www.crbs.org.uk or hard copies available from Blackwell’s Bookshop T: **0131 622 8283.**

‘Engaging volunteers: A good practice guide’

Downloadable from www.vds.org.uk or from Volunteer Development Scotland T: **01786 479593.** E-mail: information@vds.org.uk

Useful contacts

CRBS (The Central Registered Body in Scotland)
T: **01786 849777**

E-mail: info@crbs.org.uk
www.crbs.org.uk

Disclosure Scotland

T: **0870 609 6006**

E-mail: info@disclosurescotland.co.uk
www.disclosurescotland.co.uk

Scottish Disclosure Advisory Service

T: **01786 825313**

E-mail: michael@mchale90.fsnet.co.uk

Youthlink Scotland

T: **0131 313 2488**

E-mail: info@youthlink.co.uk
www.youthlink.co.uk

Scottish Executive

T: **0131 244 1567** (general DWCL enquiry line answer phone)

E-mail: DWCL@scotland.gsi.gov.uk

www.scotland.gov.uk (Information on the new Act can be found in the People & Society section)

Disclaimer: The information in this briefing has been sourced from the Central Registered Body in Scotland and the Scottish Executive. We have taken every reasonable precaution to ensure the information is correct at time of going to press. As sections of the Protection of Children (Scotland) Act have yet to be enacted, changes to the legislation may occur in the future.



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